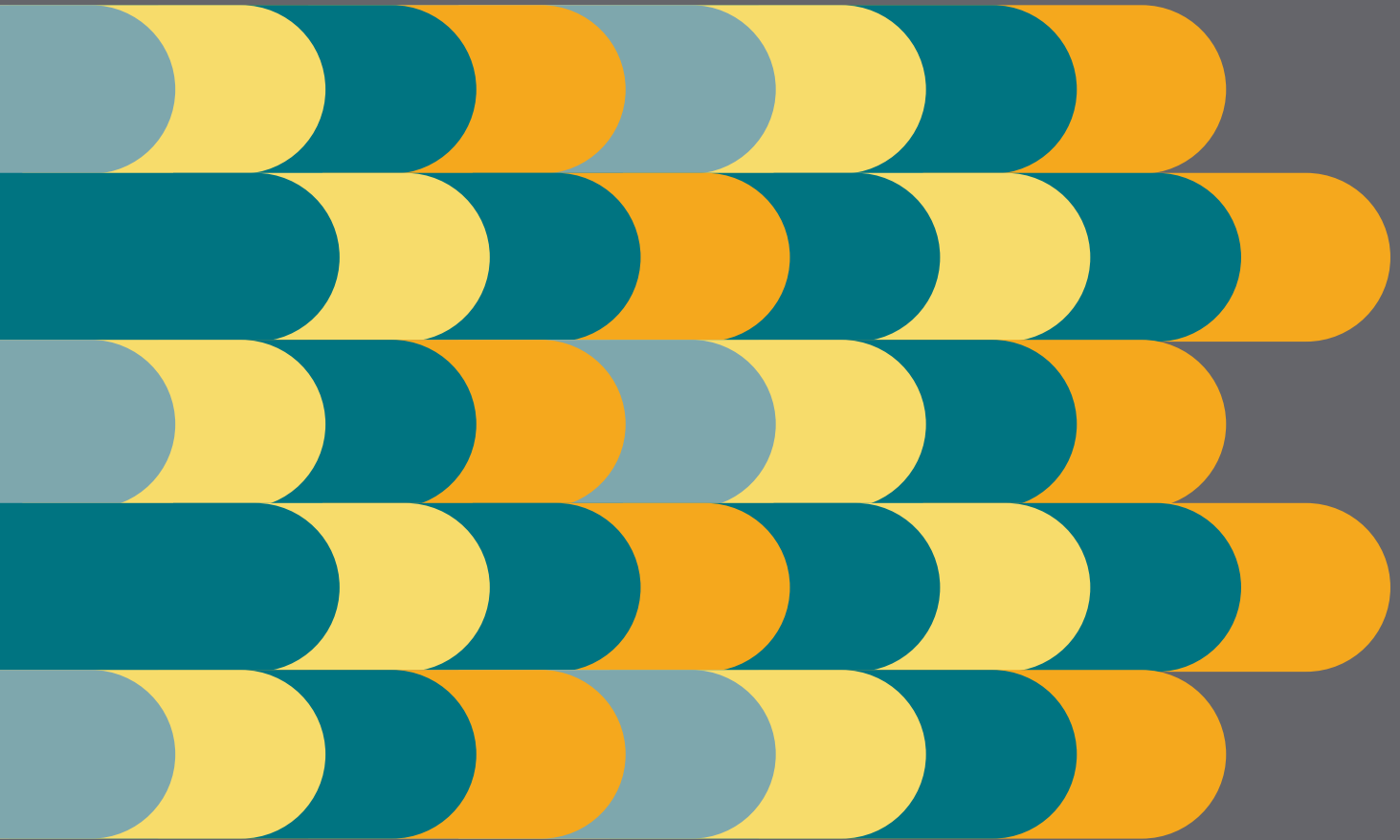




**Workers'  
Compensation  
Board**

Andrew M. Cuomo, Governor  
Clarissa M. Rodriguez, Chair

# 20 Annual 20 Report



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# Executive Summary

**T**he New York State Workers' Compensation Board (Board) is pleased to submit its 2020 Annual Report. Pursuant to Workers' Compensation Law § 153, this report states in detail the work the Board has done in hearing and deciding cases and related aspects of the Board's operations, including assembly and adjudication of workers' compensation claims and carrier compliance.

In 2020, the Board continued its efforts to maximize process and legislative enhancements, while effectively responding to the challenges posed by the COVID-19 pandemic. The steps taken allowed the Board to continue progress on improvement initiatives that are “better for workers and better for business,” and keep the workers' compensation system running smoothly amid the public health crisis.

## COVID-19 response

The Board responded quickly to the COVID-19 pandemic, taking actions to keep both the public and Board staff safe, while ensuring continuity of the workers' compensation system. The Board was able to continue operating without disruption, so there was no delay in benefits to injured workers. The Board adopted new amendments and regulations, issued important guidance regarding process and other changes related to the pandemic, and clarified key issues for health care providers, payers and injured workers. Among the actions taken, the Board:

- Moved all hearings to remote attendance;
- Issued a letter to payers urging swift investigation of claims and payment where appropriate;
- Adopted emergency amendments to allow telemedicine and telephonic visits in some circumstances;
- Waived some original signature requirements;
- Suspended Labor Market Attachment requirements; and
- Conducted extensive outreach through webinars, social media and other channels to inform the public of these response actions, and their rights and responsibilities regarding COVID-19-related claims and benefits.

### Uninterrupted hearings

Despite the pandemic, the Board was able to continue its hearing process without interruption — holding approximately 1,000 hearings a day — by shifting entirely to remote attendance using its virtual hearings system. Virtual hearings allow all parties in a workers' compensation hearing to participate remotely using their computer or mobile device. Injured workers also had the option to participate by phone. Continuing the hearing process remotely ensured there was no delay in benefits to injured workers and helped protect the public and Board staff.

## Record hearing participation

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After switching to 100% remote hearing attendance due to the pandemic, the Board saw a dramatic increase in the rate of participation among injured workers via telephone and the virtual hearings system. In 2019, the rate of attendance for injured workers (themselves, not a legal representative) was 69.8%. In the last quarter of 2020, that rate was 84.3%, the highest level recorded since the Board began tracking this information. The Board made a concerted effort to encourage injured workers to participate in their hearings by contacting those without legal representation to inform them of remote attendance options, and by having Workers' Compensation Law Judges call injured workers at the start of their hearings. Additionally, the Board educated workers, through social media and other channels, on the ease of attending hearings using the virtual hearings system.

## Prompt payment

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Continued efforts to educate payers, monitor their performance against legal time frames, and systematically penalize lapses, have resulted in insurers paying timely lost wage benefits to injured workers.

In 2020, 9 in 10 injured workers received their first benefit payment timely, meaning within 18 days of disability or 10 days from the worker giving the employer notice of an injury, whichever is later. The Board also launched the second phase of its Payer Compliance Project to further improve the performance of the payer community by focusing on timely submission of filings and the penalties that can result for late filings. In August 2020, the Board began monitoring the timeliness of the Subsequent Report of Injury Suspension filings that are required when indemnity payment(s) made to injured workers have been suspended. This latest effort is another way to ensure benefits are paid on time.

## Appealed claims quickly resolved

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The Board continued to work toward the prompt resolution of appealed claims. As of January 1, 2021, 94% of these claims were pending less than six months. The Board also maintained a significantly reduced inventory of appeals awaiting a decision.



# Claims Overview

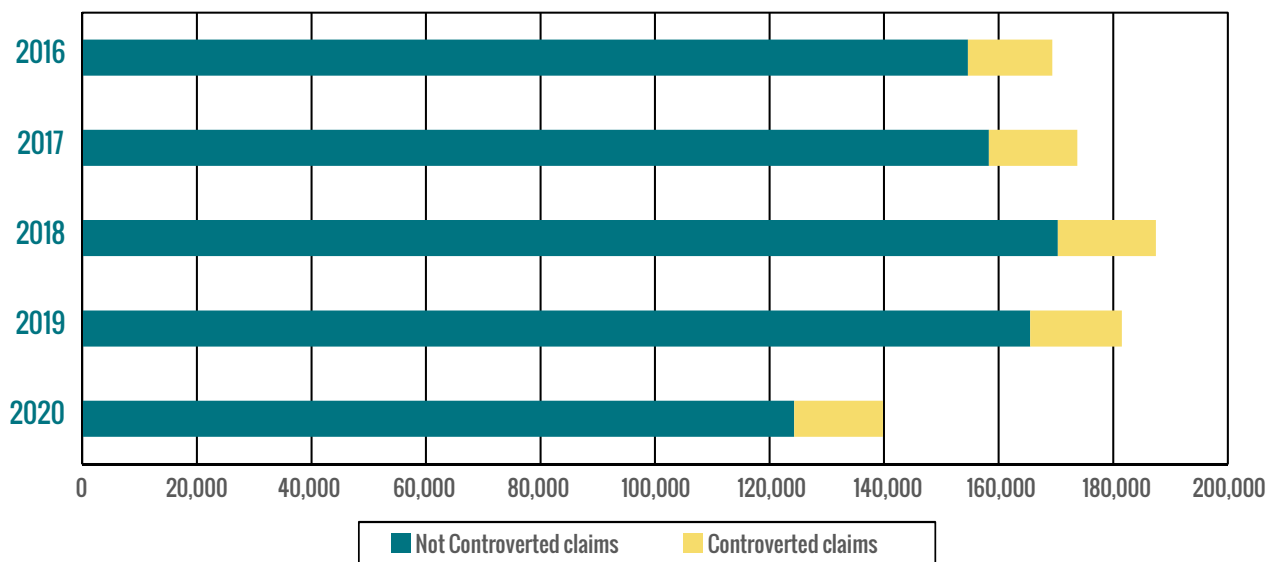
## Claims Overview

In 2020, the Board received 10 million claims documents, filed by a variety of system stakeholders, including health care providers, injured workers, employers, attorneys and insurance carriers.

The number of claims assembled in 2020 totaled 139,843. This was far less than normal because fewer people were working as a result of the COVID-19 pandemic.

Although workers' compensation is a no-fault insurance system, the insurance carrier or self-insured employer disputes or "controverts" the injured worker's eligibility for workers' compensation benefits in a small number of cases. When a claim is disputed, the Board has an expedited hearing process that strives to resolve the dispute within 90 days. In fact, the Board has consistently scheduled a pre-hearing conference for controverted claims within approximately 26 days of receipt of a complete claim.

### Claims Assembled: Controverted vs. not controverted from 2016 to 2020



Year	Total claims assembled	Controverted claims	Not controverted
2016	169,382	14,739	154,643
2017	173,779	15,476	158,303
2018	187,504	17,127	170,377
2019	181,560	16,039	165,521
2020	139,843	15,507	124,336

A **controverted claim** is one for which the Board has received:

- 1) "Notice That Right to Compensation Is Controverted" indicating that the Carrier disputes the claim, and
- 2) qualifying medical documentation.

The assembled claim and controverted claim counts are cumulative and vary from prior annual reports: Due to

the statutory due date of the Annual Report on February 1st each year, a significant number of claims are not "complete" when the data is queried for the report in mid-January each year. As additional claim documentation is received, the claim counts are expected to increase.

# Resolution Process

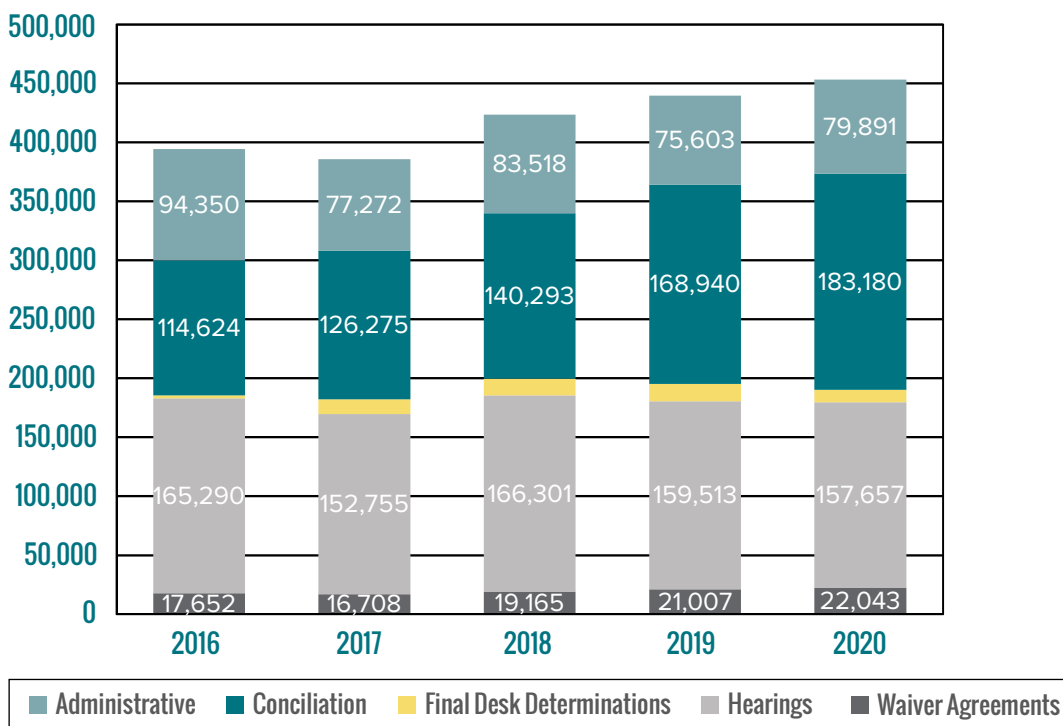




## Resolution Process

The Board adjudicates issues either formally or informally. Formal resolution is achieved via an actual hearing in front of a Workers' Compensation Law Judge. Despite the COVID-19 pandemic, the Board increased resolutions in 2020 to its highest level ever. The Board held over 244,000 hearings in 2020, during which over two thirds resolved the issue(s) at that hearing. Informal resolution includes administrative actions such as issuing desk decisions and proposed decisions based on the submitted documents. The types of issues that are treated as informal resolutions include, but are not limited to, legal objections to medical bills, penalties, procedural decisions on schedule loss development, and undisputed periods of lost time. In 2020, 60% of resolutions were resolved through informal methods. This is an increase from 48% in 2014. This shift to more informal resolution methods allows the Board to save formal hearing time for more complex disputes. Cases may take more than one hearing or informal decision to resolve. In 2020, the Board issued 453,296 claim resolutions.

### Claim Resolution by Board Processes 2016 to 2020



**Administrative** includes Administrative Determinations, Administrative Closures and Claim Consolidations.

**Conciliation** provides an informal and prompt resolution of the claim based upon the cooperation of both parties: the injured worker and the insurance carrier/self-insured employer.

**Final Desk Determinations** reflect final desk decisions, which are identified by Board decision forms (NOSD-SL, NOSD-NSL, C67-D, C68A-D, and PD-32). The PD-32 waiver agreement has been in effect since March 1, 2016. The stipulation agreements have been in effect since November 2, 2016.

A claim resolved by the **Hearing** process is one for which a judge has determined that no further action by the Board is necessary at the conclusion of the hearing; this includes Pre-Hearing Conferences. A Pre-Hearing Conference provides a mechanism for the identification of issues and relevant evidence and permits parties of interest to assess their case and to resolve outstanding issues prior to scheduling a hearing regarding those issues. The count of Hearings also includes Administrative and Full Board Review resolutions.

**Waiver Agreements** settle any or all issues in a claim for workers' compensation benefits, subject to the Board's approval.

## Claim Resolution by Board Processes 2016 to 2020

Claim Resolution	Resolution year				
	2016	2017	2018	2019	2020
<b>Informal</b>	<b>211,355</b>	<b>216,117</b>	<b>237,872</b>	<b>259,123</b>	<b>273,596</b>
Administrative	94,350	77,272	83,518	75,603	79,891
Conciliation	114,624	126,275	140,293	168,940	183,180
Final Desk Determinations	2,381	12,570	14,061	14,580	10,525
<b>Formal</b>	<b>182,942</b>	<b>169,463</b>	<b>185,466</b>	<b>180,520</b>	<b>179,700</b>
Hearings	165,290	152,755	166,301	159,513	157,657
Waiver Agreements	17,652	16,708	19,165	21,007	22,043
<b>Total</b>	<b>394,297</b>	<b>385,580</b>	<b>423,338</b>	<b>439,643</b>	<b>453,296</b>

**Administrative** includes Administrative Determinations, Administrative Closures and Claim Consolidations.

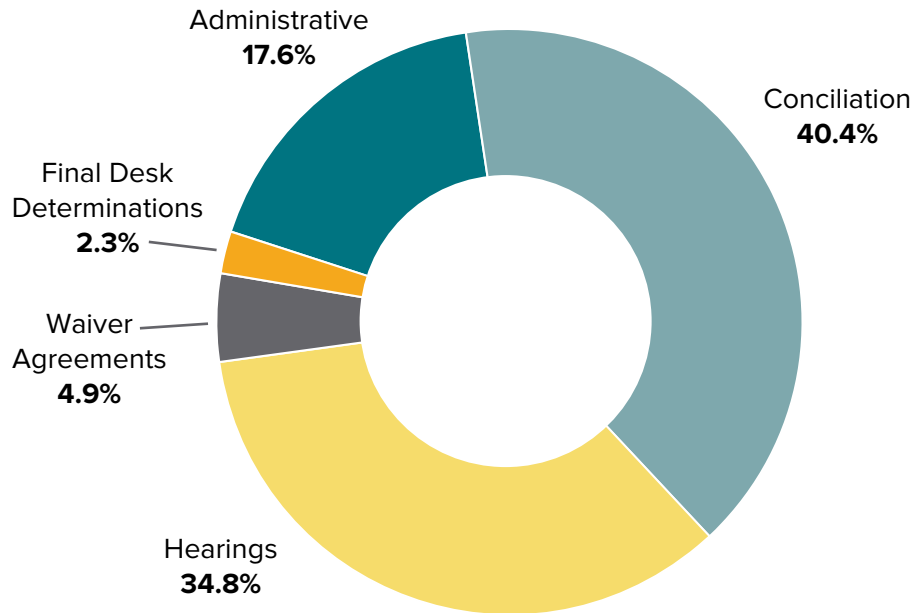
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## Claim Resolutions by Board Processes in 2020



Claim resolution	Number of resolutions	Percentage of resolutions
<b>Informal</b>	<b>273,596</b>	<b>60.4%</b>
Administrative	79,891	17.6%
Conciliation	183,180	40.4%
Final Desk Determinations	10,525	2.3%
<b>Formal</b>	<b>179,700</b>	<b>39.6%</b>
Hearings	157,657	34.8%
Waiver Agreements	22,043	4.9%
<b>Total</b>	<b>453,296</b>	<b>100.0%</b>

**Administrative** includes Administrative Determinations, Administrative Closures and Claim Consolidations.

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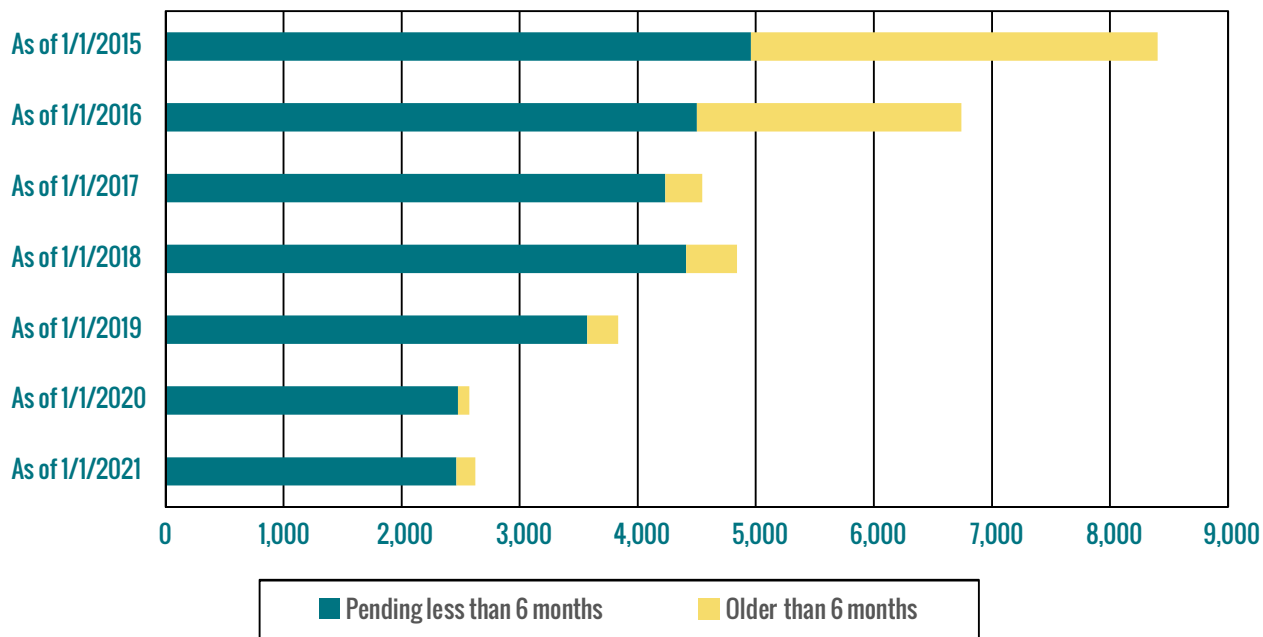
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**Waiver Agreements** settle any or all issues in a claim for workers' compensation benefits, subject to the Board's approval.

If either party believes the judge had an error of law or fact in the decision, they may raise an objection through an administrative appeal. The Board has significantly reduced the inventory of appeals awaiting a decision over the past few years while dramatically expediting their decisions. In 2014, more than 8,000 appeals awaited a decision — a year to issue a decision was common. As of January 1, 2021, the inventory of pending appeals remained low at 2,626. Of those, 94% have been pending for less than six months.

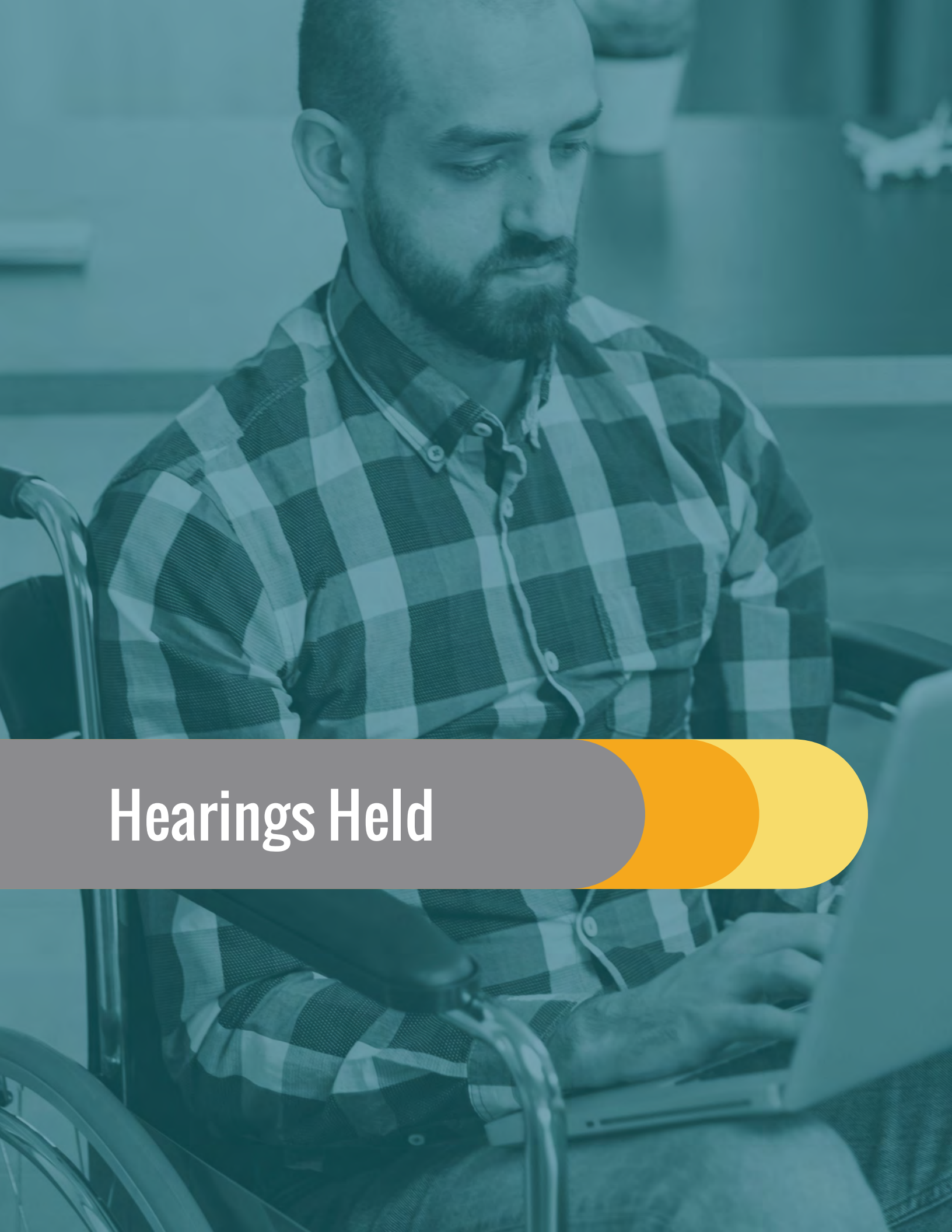
### Appealed Claims Inventory



As of date	Inventory	Older than 6 months	Percentage pending < 6 months
1/1/2015	8,404	3,445	59%
1/1/2016	6,740	2,240	67%
1/1/2017	4,547	315	93%
1/1/2018	4,840	430	91%
1/1/2019	3,834	262	94%
1/1/2020	2,575	96	96%
1/1/2021	2,626	162	94%

Age is measured from the application date of the administrative review. Accuracy of age depends on availability and accuracy of the “Appeal Application Date” of the claim.

The backlog of claims older than 6 months as of 1/1/2020 was increased from 77 to 96 in this year’s annual report to correct for a data inconsistency.

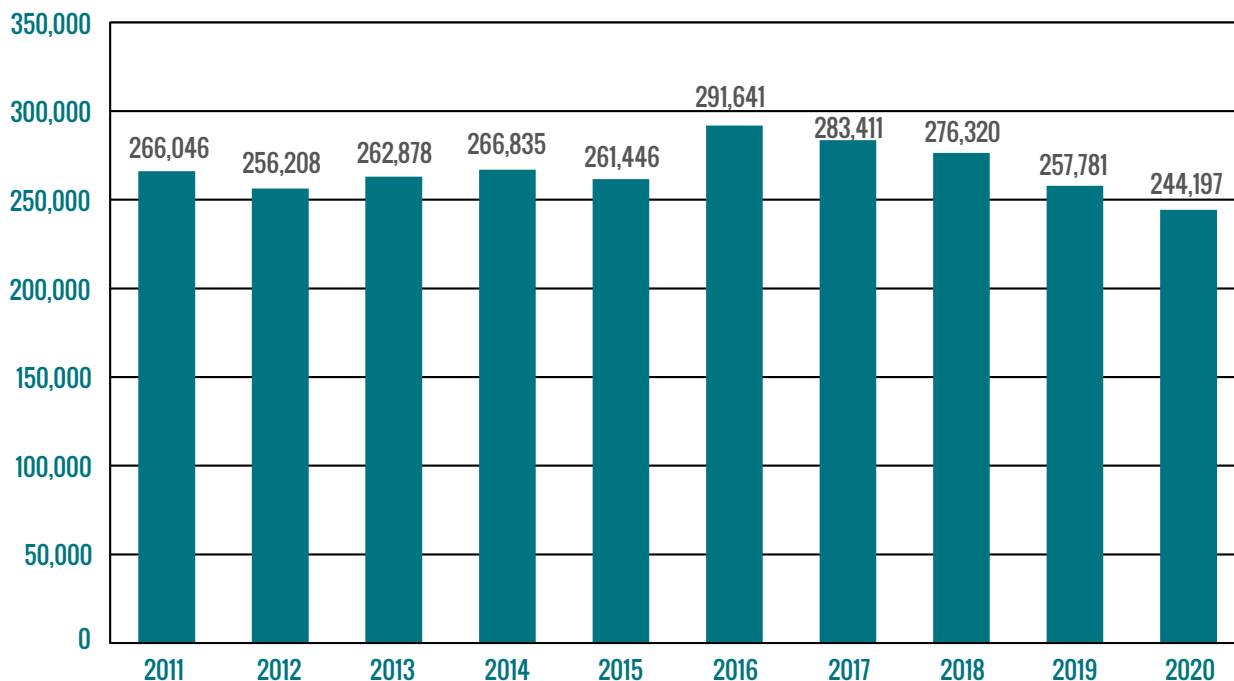


# Hearings Held

## Hearings Held

In 2020, the Board held more than 244,000 hearings. This was only a slight dip from the previous year, despite the COVID-19 pandemic. As noted above, the Board’s virtual hearings system enabled the hearing process to continue without interruption the entire time.

Number of Hearings Held from 2011 to 2020



Year	Total hearings held
2011	266,046
2012	256,208
2013	262,878
2014	266,835
2015	261,446
2016	291,641
2017	283,411
2018	276,320
2019	257,781
2020	244,197

Through 2015, the number of hearings excludes commissioner hearings, board panel reviews and Section 32 waiver agreements. It includes hearings held at district offices, customer service centers and hearing point locations. Starting in 2016, the count includes Section 32 hearings.

If a hearing was held to resolve the issues in more than one claim for an individual injured worker, then the total number of hearings in this report reflects the total number of claims addressed at the hearing.



**Continuing to Improve Benefit  
Determinations and Enhance Care**

The Board continued to make comprehensive changes in several areas to advance its goals of improving benefit determinations and enhancing care for injured workers. Among these changes are the Board’s efforts to bring additional health care providers into the system and the creation of additional treatment guidelines that incorporate evidence-based medicine using the latest medical advancements to help speed the healing process. The Board is also leveraging technology to create new, web-based systems that will support these goals and allow providers to focus on treating injured workers, rather than burdensome paperwork.

## More Health Care Providers

The Board’s updated medical fee schedule, which significantly increases reimbursement to health care providers, and the adoption of the universal bill form (*Form CMS-1500*) to simplify medical reporting, are designed to attract more providers into the system and make medical billing easier.

A law included in New York’s Fiscal Year 2019-2020 Enacted Budget enabled the Board to authorize more types of health care providers to treat workers’ compensation patients. Beginning January 1, 2020, licensed clinical social workers, nurse practitioners and acupuncturists (all three new to the system), as well as physician assistants, occupational therapists and physical therapists could apply for their own authorization. Previously, only physicians, chiropractors, podiatrists and psychologists could be authorized to treat injured workers. In 2020, approximately 11,500 health care providers were newly authorized or reauthorized to treat workers’ compensation patients (authorization renewals are on a two- or three-year cycle, coincident with the provider’s license renewal). Additional types of providers coming into the system means that injured workers will have more options and better access to the care they need.

### Percent of Providers Authorized in 2020 by Type

Provider type	Percent
<b>Newly eligible</b>	
Physical Therapist	50.4%
Physician Assistant	14.3%
Nurse Practitioner	10.5%
Occupational Therapist	7.6%
Acupuncturist	4.0%
Licensed Clinical Social Worker	1.3%
<b>Previously eligible (includes reauthorizations)</b>	
Physician	9.8%
Chiropractor	1.0%
Psychologist	0.6%
Podiatrist	0.4%
<b>Total authorizations in 2020</b>	<b>100.0%</b>



## Guides for Better Care

The Board continued to successfully implement legislative initiatives from the 2007 and 2017 Reforms designed to improve medical treatment for injured workers.

**Drug Formulary:** The Board implemented a drug formulary that includes a list of preferred medications that can be prescribed to injured workers without any prior approval. The *New York Workers' Compensation Drug Formulary (Drug Formulary)* took effect in June 2019, and all new prescriptions were required to comply by December 5, 2019. The deadline for prescription drug refills to comply with the *Drug Formulary*, the final step in implementation, will align with the launch of the first phase of the Board's new web-based claims system, expected in the mid second quarter of 2021 (calendar year).

**Medical Treatment Guidelines:** In 2020, six new guidelines were adopted to the Workers' Compensation Board's *New York Medical Treatment Guidelines (MTGs)* and two others were released for public comment. The newly adopted *MTGs* include:

- *Elbow Injuries*
- *Foot and Ankle Injuries*
- *Hip and Groin Injuries*
- *Hand, Wrist and Forearm Injuries (including Carpal Tunnel Syndrome)*
- *Occupational Interstitial Lung Disease*
- *Occupational/Work-Related Asthma*

Additional *MTGs* released for public comment include *Post-Traumatic Stress Disorder* and *Major Depressive Disorder*. The Board released new online training courses on each new *MTG*, including an overview of the General Guideline Principles, conditions associated with the body part or disease, and treatment recommendations. Continuing Medical Education (CME) credit was made available for each course, along with non-CME training presentations for those who did not need CME credit.

### MTGs as of December 31, 2020

In effect	Adopted, not effective	Out for public comment
<i>Carpal Tunnel Syndrome</i>	<i>Elbow Injuries</i>	<i>Major Depressive Disorder</i>
<i>Knee</i>	<i>Foot and Ankle Injuries</i>	<i>Post-Traumatic Stress Disorder</i>
<i>Mid and Low Back</i>	<i>Hand, Wrist and Forearm Injuries (replacing Carpal Tunnel Syndrome)</i>	
<i>Neck</i>	<i>Hip and Groin Injuries</i>	
<i>Non-Acute Pain</i>	<i>Occupational Interstitial Lung Disease</i>	
<i>Shoulder</i>	<i>Occupational/Work-Related Asthma</i>	

# Better Systems



# ONBOARD

The Board is using technology to improve its systems and processes, and modernize the way stakeholders interact with the Board.

**Medical Portal Enhancements:** The Board launched an electronic Medical Portal in 2019 to give health care providers and other stakeholders online, anytime access to information and workflow tools relevant to their role in the workers' compensation system. The first phases enabled health care providers and payers to access the Board's *MTGs* and *Drug Formulary*, utilize a new online process for prior authorization requests for drugs not on the *Drug Formulary* and access a custom dashboard to track the status of requests and required actions. Health care providers are now using this Portal to apply for Board authorization. Additional functionality was added in 2020 with the launch of an MTG Lookup Tool, which confirms adherence to the *MTGs*.

**New Claims System:** The Board continues the process of replacing its multiple legacy, paper-based claims systems by building a single, web-based platform, called OnBoard.

The OnBoard system will be user-friendly, offering improved and expanded access to real-time claim data for all parties of interest, new electronic self-service features for interacting with the Board, and an overall reduction in the number of paper forms to improve responsiveness to stakeholder needs. The system is targeted to be fully implemented by 2023, with the first phase, OnBoard: Limited Release, planned to roll out in the mid second quarter of 2021.



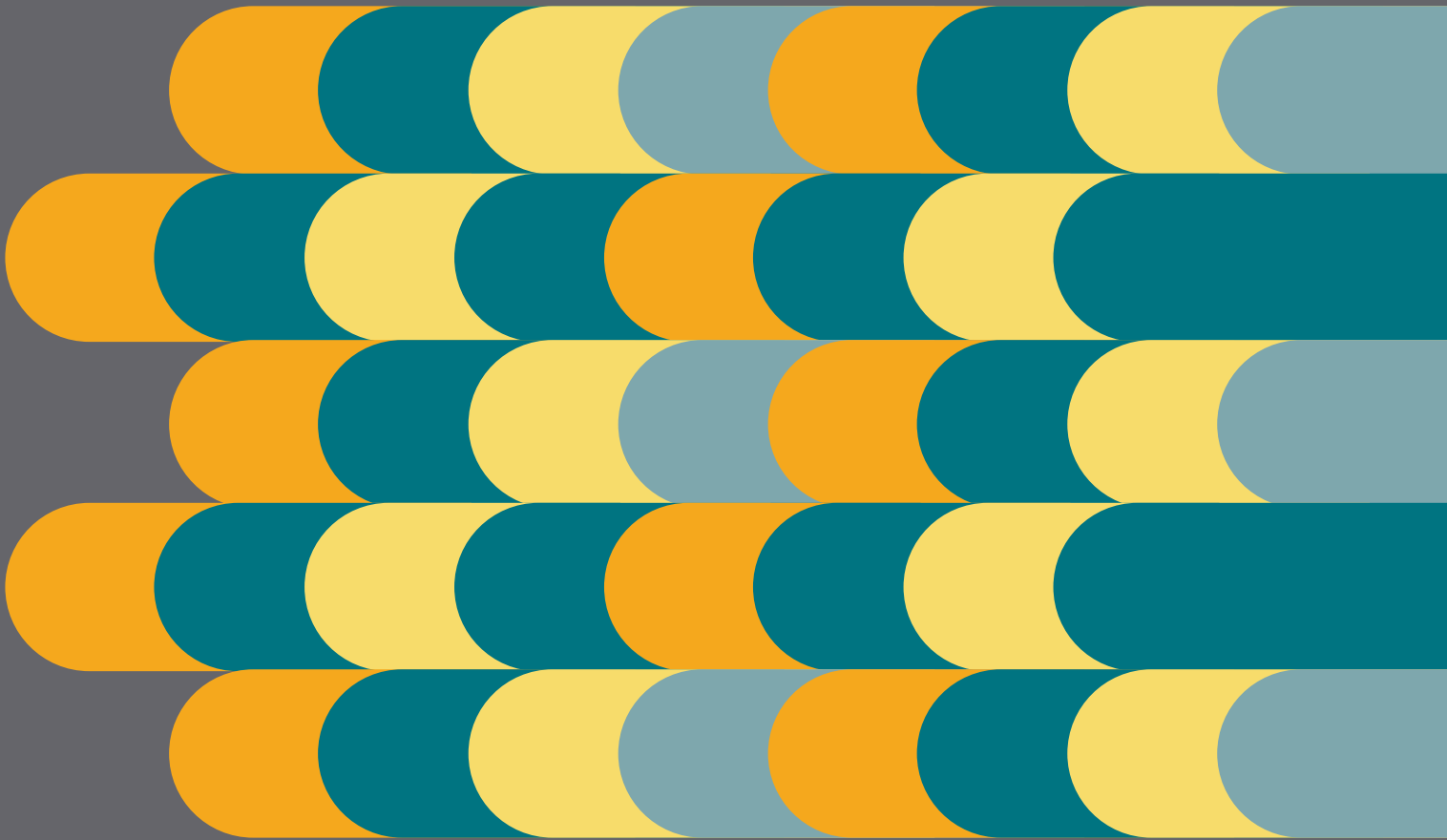
A woman with curly hair, wearing a dark work jacket, is smiling and looking down at a handheld device she is holding. The background shows a factory or industrial setting with a car wheel and metal structures. The entire image has a teal color overlay.

# Moving Forward, Building on Success

Despite the COVID-19 pandemic, the Board continued to meet the needs of injured workers and employers in 2020, while simultaneously making improvements that will benefit stakeholders for years to come. With new guidelines, new tools and new providers now part of the New York State workers' compensation system, the Board will continue to make strides in building a system that's both better for workers and better for business.



# Workers' Compensation Board




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